

No. 81. An act relating to adult protective services and emergency housing transition.

(H.171)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 33 V.S.A. chapter 69, subchapter 1 is amended to read:

Subchapter 1. Reports of Abuse of Vulnerable Adults

§ 6901. PURPOSE

(a) The purpose of this chapter is to:

(1) protect vulnerable adults whose health and welfare may be adversely affected through abuse, neglect, or exploitation; provide a temporary or permanent nurturing and safe environment for vulnerable adults when necessary; and for these purposes to require the reporting of suspected abuse, neglect, and exploitation of vulnerable adults and the investigation of such reports and provision of services, when needed; and to intervene in the family or substitute care situation only when necessary to ensure proper care and protection of a vulnerable adult or to carry out other statutory responsibilities

(2) recognize and accommodate the barriers for vulnerable adults that may impair both their response to maltreatment and the ability to substantiate allegations of maltreatment; and

(3) require the reporting of suspected abuse, neglect, and exploitation of vulnerable adults, the investigation of such reports, and the establishment of protective services, when needed.

(b) The provision of protective services under this chapter shall not cause undue harm or violate the individual's autonomy and shall provide opportunities for the vulnerable adult's preferences to be considered.

§ 6902. DEFINITIONS

As used in this chapter:

(1) "Abuse" means:

(A) Any medical treatment of a vulnerable adult that places life, health, or welfare in jeopardy or is likely to result in impairment of health that purposely, knowingly, or recklessly places the life, health, or welfare of a vulnerable adult in jeopardy or is likely to result in impairment of health to the vulnerable adult.

(B) Any conduct committed ~~with an intent or reckless disregard that such conduct~~ purposely, knowingly, or recklessly that is likely to cause unnecessary harm, unnecessary pain, or unnecessary suffering to a vulnerable adult or places the life, health, or welfare of a vulnerable adult in jeopardy or is likely to result in impairment of health to the vulnerable adult.

(C) ~~Unnecessary or unlawful confinement or unnecessary or unlawful restraint of a vulnerable adult~~ Confinement, seclusion, restraint, or interference with the freedom of movement of a vulnerable adult, unless necessary to ensure the health and safety of the vulnerable adults or others.

(D)(i) Any sexual activity or acts of a sexual nature with a vulnerable adult by a caregiver ~~who volunteers for or is paid by a caregiving facility or~~

~~program.~~ This definition shall not apply to a consensual relationship between a vulnerable adult and a spouse or household member as defined in 15 V.S.A. § 1101, ~~nor~~ or to a consensual relationship between a vulnerable adult and a caregiver hired, supervised, and directed by the vulnerable adult.

(ii) Any sexual activity or acts of a sexual nature with a vulnerable adult when the vulnerable adult does not consent or when the individual knows or should know that the vulnerable adult is incapable of resisting or consenting to the sexual activity due to age, disability, or fear of retribution or hardship, regardless of whether the individual has actual knowledge of the adult's status as a vulnerable adult.

(E) ~~Intentionally subjecting a vulnerable adult to behavior that should reasonably be expected to result in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of serious emotional distress~~ Purposely or recklessly subjecting a vulnerable adult to behavior that a reasonable person would expect to result in serious emotional or psychological distress, including intimidation, fear, humiliation, degradation, agitation, or disorientation.

(F) Administration, or threatened administration, of a drug; or substance; ~~or preparation~~ to a vulnerable adult for a purpose other than legitimate and lawful medical or therapeutic treatment.

(G) Wrongful denial or withholding of necessary medication, care, durable medical equipment, or treatment.

(H) Use of deception, force, threat, undue influence, harassment, duress, or fraud to induce a vulnerable adult to request or consent to receive or refuse treatment.

(2) “Activities of daily living” means dressing and undressing, bathing, personal hygiene, bed mobility, toilet use, transferring, mobility in and around the home, communication, and eating.

(3) “Acts of a sexual nature” means fondling, exposure of genitals, and lewd and lascivious conduct.

(4) “Adult” means any individual who is 18 years of age or older.

(5) “Alleged perpetrator” means the individual alleged to have abused, neglected, or exploited the alleged victim.

(6) “Alleged victim” means the individual who is alleged to have been abused, neglected, or exploited by the alleged perpetrator.

(7) “Assessment” means a process by which Adult Protective Services gathers additional information to determine if an investigation should be opened.

(8) “Care” means subsistence, medical services, personal care services, mental health services, or rehabilitative services and includes assistance with activities of daily living or instrumental activities of daily living.

(9) “Caregiver” means a person, agency, facility, or other organization with responsibility for providing subsistence or medical or other care to an adult who is an elder or has a disability, who has assumed the responsibility

~~voluntarily, by contract, or by an order of the court; or a person providing care, including medical care, custodial care, personal care, mental health services, rehabilitative services, or any other kind of care provided that is required because of another's age or disability;~~

(A) a worker or employee in a facility or program that provides care to an adult who is an elder or has a disability and who has assumed the responsibility voluntarily, by contract, or by an order of the court; or

(B) a person with a designated responsibility for providing care to a person that is required because of the person's age or disability.

~~(3)~~(10) “Commissioner” means the Commissioner of Disabilities, Aging, and Independent Living.

~~(4)~~(11) “Department” means the Department of Disabilities, Aging, and Independent Living.

~~(5)~~(12) “Employer” means a person or organization who employs or contracts with one or more individuals to care for vulnerable adults, on either a paid or volunteer basis.

~~(6)~~(13) “Exploitation” means:

(A) willfully or knowingly using, withholding, transferring, or disposing of funds or property of a vulnerable adult without or in excess of legal authority ~~for the wrongful profit or advantage of another~~ to the detriment of a vulnerable adult;

(B) purposeful unauthorized access, sharing, or use of identifying information, image or likeness, personal accounts, or documents of a vulnerable adult without or in excess of legal authority to the detriment of the vulnerable adult or for the wrongful profit or advantage of another;

(C) breach of duty by a guardian, agent, or other fiduciary to the detriment of a vulnerable adult;

(D) acquiring or attempting to acquire possession or control of or an interest in funds or property of a vulnerable adult through the use of deception, force, threat, undue influence, harassment, duress, or fraud;

~~(C)(E) the act of forcing or compelling a vulnerable adult against his or her will to perform services for the profit or advantage of another~~ refusing to return or surrender possession or control of an interest in funds or property of a vulnerable adult upon the request of a vulnerable adult or the vulnerable adult's representative;

~~(D)(F) any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status~~ knowingly failing to use a vulnerable adult's income and assets for the necessities required for that vulnerable adult's support and maintenance;

(G) influencing or persuading a vulnerable adult to perform services with substandard compensation for the profit or advantage of another.

(14) “Expungement” means the removal of an individual’s name and associated identifying information from the Adult Abuse Registry.

(15) “Instrumental activities of daily living” means meal preparation, medication management, phone use, money management, household maintenance, housekeeping, laundry, shopping, transportation, and care of adaptive equipment.

(16) “Interested person” means a representative of the vulnerable adult; Adult Protective Services staff; the Commissioner of Disabilities, Aging, and Independent Living; or the Commissioner’s designee.

(17) “Investigative summary report” means the document that summarizes the investigation conducted by Adult Protective Services and includes a recommendation to substantiate or unsubstantiate the investigated allegations against the alleged perpetrator.

(18) “Lewd or lascivious conduct” has the same meaning as in 13 V.S.A. § 1375.

(19) “Maltreatment” means abuse, neglect, or exploitation as defined in this section. “Maltreatment” does not include self-neglect.

(20) “Mandatory reporter” means an individual with an obligation to report allegations of maltreatment of vulnerable adults pursuant to 6903 of this title.

~~(7)(21)~~(A) “Neglect” means purposeful ~~or~~, knowing, or reckless failure or omission by a caregiver that has resulted in, or could be expected to result in, physical or psychological harm, including a failure or omission to:

(i) provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult, including food, clothing, medicine, shelter, supervision, and medical services, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or ~~his or her~~ the vulnerable adult’s representative, or an advance directive, as defined in 18 V.S.A. § 9701;

(ii) make a reasonable effort, in accordance with the authority granted the caregiver, to protect a vulnerable adult from abuse, neglect, or exploitation by others;

(iii) carry out a plan of care for a vulnerable adult ~~when such failure results in or could reasonably be expected to result in physical or psychological harm or a substantial risk of death to the vulnerable adult,~~ unless the caregiver is acting pursuant to the wishes of the vulnerable adult or ~~his or her~~ the vulnerable adult’s representative, or an advance directive, as defined in 18 V.S.A. § 9701; or

(iv) report significant changes in the health status of a vulnerable adult to a physician, nurse, or immediate supervisor, when the caregiver is employed by an organization that offers, provides, or arranges for personal care.

(B) Neglect ~~may be repeated conduct or a single incident that has resulted in or could be expected to result in physical or psychological harm, as a result of subdivision (A)(i), (ii), or (iii) of this subdivision (7)~~ does not include self-neglect.

~~(8)(22)~~ “Plan of care” ~~includes a duty~~ means a medically approved plan of treatment, protocol, individual care plan, rehabilitative plan, plan to address activities of daily living, or similar procedure describing the care, treatment, or services to be provided to address a vulnerable adult’s physical, psychological, or rehabilitative needs.

~~(9)(23)~~ “Protective services” means services, actions, measures, or intervention interventions that will, are intended, through voluntary agreement or through appropriate court action, to prevent further neglect, abuse, or exploitation of a vulnerable adult. Such services may include ~~supervision, guidance, counseling, referrals, petitioning for relief from abuse, or petitioning for the appointment of a guardian, and, when necessary, assistance in the securing of safe and sanitary living accommodations.~~ However, nothing in this chapter gives the Commissioner authority to place the vulnerable adult in a State school or hospital, except pursuant to 18 V.S.A. chapter 181 or 206.

(24) “Provider” means an individual, organization, or entity that provides care to adults known to be vulnerable.

(25) “Recommendation for substantiation” means that an investigation has been conducted and the Adult Protective Services investigator has

concluded that the preponderance of the evidence discovered in the course of the investigation would lead a reasonable person to believe that the alleged perpetrator abused, neglected, or exploited the vulnerable adult.

(26) “Report” means the statements provided to Adult Protective Services from a reporter alleging that a vulnerable adult has been abused, neglected, or exploited.

(27) “Reporter” means the person who has submitted a report to Adult Protective Services.

~~(10)~~(28) “Representative” means a court-appointed guardian, or an agent acting under an advance directive executed pursuant to 18 V.S.A. chapter 231, or an agent under a power of attorney, unless otherwise specified in the terms of the advance directive power of attorney.

(29)(A) “Self-neglect” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including:

(i) obtaining essential food, clothing, shelter, and medical care;

(ii) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

(iii) managing one’s own financial affairs.

(B) The term “self-neglect,” which is not maltreatment by another and is distinct from the definition of “neglect,” excludes individuals who make a conscious and voluntary choice not to provide for certain basic needs as a

matter of lifestyle, personal preference, or religious belief and who understand the consequences of their decision.

~~(11)~~(30) “Sexual activity” means a sexual act as defined in 13 V.S.A. § 3251; other than appropriate medical care or personal hygiene, ~~or lewd and lascivious conduct.~~

~~(12)~~(31) “Substantiated ~~report~~” means that the Commissioner or the Commissioner’s designee has determined, after the investigation, that a report ~~is based upon accurate and reliable information that would lead a reasonable person to believe~~ demonstrates, by a preponderance of the evidence, that the vulnerable adult has been abused, neglected, or exploited by the alleged perpetrator.

(32) “Unsubstantiated” means that an investigation has been conducted without a recommendation of substantiation. “Unsubstantiated” does not imply that maltreatment of a vulnerable adult by an alleged perpetrator did or did not occur. Reasons for unsubstantiation include:

(A) the Adult Protective Services investigator’s conclusion that the preponderance of the evidence would not lead a reasonable person to believe that the alleged perpetrator had abused, neglected, or exploited the vulnerable adult;

(B) evidence that the alleged victim is not vulnerable;

(C) evidence that maltreatment did not occur; or

(D) a lack of sufficient evidence to demonstrate that the alleged victim meets the definition of a vulnerable adult or that maltreatment occurred.

~~(13)~~(33) “Volunteer” means an individual who, without compensation, provides services through a private or public organization.

~~(14)~~(34) “Vulnerable adult” means any person 18 years of age or older who:

(A)(i) is a resident of a facility required to be licensed under chapter 71 of this title;

~~(B)~~(ii) is a resident of a psychiatric hospital or a psychiatric unit of a hospital;

~~(C)~~(B) ~~has been~~ was receiving assistance with personal care services for more than one month from a designated home health agency ~~certified by the Vermont Department of Health~~ or from a person or organization that offers, provides, or arranges for personal care or is determined to be clinically eligible to receive Long-Term Medicaid waiver services; or

~~(D)~~(C) regardless of residence or whether any type of service is received, ~~is impaired due to~~ has a physical, mental, or developmental disability; infirmities as a result of brain damage; or a mental condition; or infirmities of aging, mental condition, or physical, psychiatric, or developmental disability resulting in:

(i) ~~that results in some~~ impairment of the individual’s ability to ~~provide for his or her own care without assistance, including the provision of~~

~~food, shelter, clothing, health care, supervision, or management of finances~~
independently engage in activities of daily living or instrumental activities of
daily living or to provide for some aspect of the adult's own personal care
without assistance; or

(ii) ~~because of the disability or infirmity, the individual has an~~
~~impaired~~ some impairment of the adult's ability to protect himself or herself
the adult from abuse, neglect, or exploitation.

§ 6903. REPORTING SUSPECTED ABUSE, NEGLECT, AND

EXPLOITATION OF VULNERABLE ADULTS

(a) ~~Any of the following, other than a crisis worker acting pursuant to 12~~
~~V.S.A. § 1614 and the State Long Term Care Ombudsman or a representative~~
~~of the Office, as defined in section 7501 of this title, who knows of or has~~
~~received information of abuse, neglect, or exploitation of a vulnerable adult or~~
~~who has reason to suspect that any vulnerable adult has been abused,~~
~~neglected, or exploited shall report or cause a report to be made in accordance~~
~~with the provisions of section 6904 of this title within 48 hours: All~~
employees, contractors, volunteers, or grantees who directly provide health
care, law enforcement, caregiving, counseling, education, or social services to
adults who know of information of abuse, neglect, or exploitation of a
vulnerable adult or who have reason to suspect that any vulnerable adult has
been abused, neglected, or exploited shall report in accordance with the
provisions of section 6904 of this title within two business days.

(1) ~~all employees, contractors, and grantees of the Agency of Human Services who are involved in caregiving;~~ If an individual listed in this subsection is a direct witness to evidence of abuse, neglect, or exploitation, the individual shall report or be party to a report that is made on behalf of multiple mandatory reporters.

(2) ~~a physician, osteopath, chiropractor, physician assistant, nurse, medical examiner, licensed nursing assistant, emergency medical services personnel, dentist, or psychologist;~~ If an individual listed in this subsection knows of abuse, neglect, or exploitation of a vulnerable adult or has actual knowledge that any vulnerable adult has been abused, neglected, or exploited, the individual shall report unless the individual has reason to believe that the evidence of abuse, neglect, or exploitation has already been reported.

(3) ~~a school teacher, school librarian, school administrator, school guidance counselor, school aide, school bus driver, or school employee or school contractor who works regularly with students;~~ Except as provided in subdivision (4) of this subsection (a), an individual listed in this subsection (a) shall not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

(4) A crisis worker acting pursuant to 12 V.S.A. § 1614 and the State Long-Term Care Ombudsman or a designee of the Office, as defined in section 7501 of this title, shall not be required to make a report under this subsection

(a) if the report would be based upon information received in a communication that is:

(A) made to a crisis worker or State Long-Term Care Ombudsman or a designee of the Office acting in the individual's professional capacity; and

(B) intended by the parties to be confidential at the time the communication is made.

~~(4) a mental health professional, social worker, person or organization that offers, provides, or arranges for personal care for vulnerable adults; caregiver employed by a vulnerable adult; employee of or contractor involved in caregiving for a community mental health center; law enforcement officer; or individual who works regularly with vulnerable adults and who is an employee of an adult day care center, area agency on aging, senior center, or meal program designed primarily to serve vulnerable adults;~~

~~(5) a hospital, nursing home, residential care home, home health agency, or any entity providing nursing or nursing-related services for remuneration; intermediate care facility for adults with developmental disabilities; therapeutic community residence, group home, developmental home, school or contractor involved in caregiving; or an operator or employee of any of these facilities or agencies.~~

(b) Any other concerned person not listed in subsection (a) of this section who knows of or has received a complaint of abuse, neglect, or exploitation of a vulnerable adult or who has reason to suspect that any vulnerable adult has

been abused, neglected, or exploited may report or cause a report to be made in accordance with the provisions of section 6904 of this title.

(c) The identity of a person who makes a report under this section shall be kept confidential unless:

(1) the person making the report consents to disclosure;

(2) a judicial proceeding results from the report; ~~or~~

(3) a court, after a hearing, finds probable cause to believe the report was not made in good faith and orders the Department to disclose the person's identity; or

(4) the reporter is listed in subdivision (a)(1) of this section, in which case the reporter's information may be shared with other investigative bodies as necessary to conduct the investigation.

§ 6904. NATURE AND CONTENT OF REPORT; TO WHOM MADE

A report shall be made ~~orally or in writing~~ to the Commissioner or the Commissioner's designee as soon as possible, but in no event later than 48 hours thereafter. ~~The report may also be made to a law enforcement officer. If an oral report is made by telephone or otherwise, the Commissioner or designee shall request that it be followed within one week by a report in writing. Reports shall contain~~ To be considered a report to the Commissioner or designee, it shall contain the name and address of the reporter as well as the names and addresses of the vulnerable adult and persons responsible for ~~his or her~~ the vulnerable adult's care, if known; the age of the vulnerable adult; the

nature of ~~his or her~~ the vulnerable adult's disability; the nature and extent of the vulnerable adult's abuse, neglect, or exploitation together with any evidence of previous abuse, neglect, or exploitation of the vulnerable adult; and any other information that the reporter believes might be helpful in establishing the cause of any injuries or reasons for the abuse, neglect, or exploitation as well as in protecting the vulnerable adult. If the reporter is in possession of documentation that establishes the alleged victim's conditions, needs, or services, that shall be included in the report. Any evidence of maltreatment shall also be cited in the report. If a report of abuse, neglect, or exploitation involves the acts or omissions of the Commissioner or employees of ~~that~~ the Department, then such reports shall be directed to the Secretary of ~~the~~ Human Services, who shall cause the report to be investigated by appropriate staff other than staff of the Department.

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§ 6906. ASSESSMENT AND INVESTIGATION

(a) Report of maltreatment.

(1) ~~The Commissioner shall cause an investigation to commence within 48 hours after receipt of a report made pursuant to section 6904 of this title~~ Upon receipt of a report of maltreatment, the Department shall determine whether the report constitutes an allegation of abuse, neglect, or exploitation as defined in section 6902 of this title. The Department shall respond to reports

of alleged abuse, neglect, or exploitation that occurred in Vermont and to out-of-State conduct when the vulnerable adult is a resident of Vermont.

~~(2) The Commissioner shall keep the reporter and the alleged victim informed during all stages of the investigation, and shall:~~

~~(A) Notify the reporter, the victim, and the victim's legal representative, if any, in writing if Adult Protective Services or the Division of Licensing and Protection decides not to investigate the report. The notification shall be provided within five business days after the decision is made and shall inform the reporter that he or she may ask the Commissioner to review the decision.~~

~~(B) Notify the reporter, the victim, and the victim's legal representative, if any, in writing if Adult Protective Services or the Division of Licensing and Protection refers the report to another agency. The notification shall be provided within five business days after the referral is made.~~

~~(C) Notify the reporter, the victim, and the victim's legal representative, if any, in writing of the outcome of the investigation. The notification shall be provided within five business days after the decision is made and shall inform the reporter that he or she may ask the Commissioner to review the decision~~ The Department shall determine whether to conduct an assessment or an investigation, as provided for in this section, or whether to screen out the report. An assessment may be used to determine whether an investigation is necessary. The Department shall begin either an assessment or

an investigation within one business day in all cases in which the alleged victim has experienced a life-threatening or severe injury; requires hospitalization as a result of maltreatment; was the alleged victim of sexual abuse; or is experiencing ongoing harm. The Department shall initiate an assessment or an investigation within two business days after the day of the receipt of all other accepted reports made pursuant to section 6904 of this title. The Department shall collect the following demographic information about the alleged victim and alleged perpetrator, if available, if an assessment or investigation is opened: gender, race, age, ethnicity, sexual orientation, gender identity, and disability status.

(3) The decision to conduct an assessment shall include consideration of the following factors:

(A) the severity of any alleged maltreatment and any injuries;

(B) the relationship between the alleged victim and alleged perpetrator;

(C) the known history of the report; and

(D) the detail and specificity of information provided in the report regarding the alleged victim's vulnerability and the alleged maltreatment.

(4) The Department shall investigate when an accepted report involves allegations indicating serious maltreatment or ongoing risk of harm to the alleged victim. The Department may investigate any report of maltreatment Adult Protective Services receives.

(5) The Department shall begin an immediate investigation if, at any time during an assessment, it appears that an investigation is appropriate.

(6) To the extent permitted by law, the Department may collaborate with law enforcement, health care and service providers, and other departments and agencies in Vermont and other jurisdictions to evaluate the risk to the vulnerable adult and may enter into reciprocal agreements with law enforcement, other departments and agencies, and other jurisdictions to further the purposes of this section. In no event shall the Department disclose information to other divisions, departments, or agencies unless such a disclosure is necessary to further the express purpose of this section.

(b) Assessment. ~~The investigation shall include, except where inclusion would jeopardize the health, welfare, or safety of the vulnerable adult:~~

~~(1) a visit to the reported victim's place of residence or place of custody and to the location of the reported abuse, neglect, or exploitation;~~

~~(2) interviews with any available witnesses to the alleged abuse, neglect, or exploitation;~~ An assessment, to the extent that is reasonable under the facts and circumstances provided in a report, shall include the following:

~~(3)(A)~~ an interview with the reporter of the alleged abuse, neglect, or exploitation and the alleged victim, which shall focus on ensuring the immediate safety of the alleged victim and mitigating the future risk of harm to the alleged victim in the current environment;

~~(4) an interview with the reported victim, which interview may take place without the approval of the vulnerable adult's parents, guardian, or caregiver, but cannot take place over the objection of the reported victim; and~~

~~(5) an opportunity for the person who allegedly abused, neglected, or exploited to be interviewed.~~

(B) a determination as to whether the alleged victim meets the definition of a vulnerable adult and whether the allegations, if true, meet the statutory definition of abuse, neglect, or exploitation, or any combination thereof; and

(C) in collaboration with the alleged victim, the identification of resources and protective service needs that reduce the risk of future abuse, neglect, or exploitation and improve or restore the care and safety of the alleged victim.

(2) Services offered during or at the conclusion of an assessment can only be implemented through voluntary agreement or court action.

(3) If the assessment is closed without resulting in an investigation, there shall be no finding of abuse, neglect, or exploitation. However, the Department shall document the outcome of the assessment.

(4) The Department shall provide written notice to the victim, and the victim's representative who is not the subject of the assessment, of the outcome of the assessment.

(c) Investigation. ~~Upon completion of the investigation, a written report describing all evidence obtained and recommending a finding of substantiated or unsubstantiated shall be submitted to the Commissioner or designee for final resolution. If the recommendation is for a finding of substantiated the person shall be given notice of the recommendation, and the evidence that forms the basis of the recommendation, and shall be notified of how a substantiated report might be used. The person shall be offered an opportunity to dispute the recommendation and may, within 15 days of notification, request an administrative hearing in front of the Commissioner or designee. Following the hearing, or if no hearing is requested within 15 days of notification, the Commissioner or designee shall make a finding of substantiated or unsubstantiated, and notify the person of the decision and of the right to appeal.~~

(d) ~~Within 30 days of notification that a report has been substantiated, a person against whom a complaint has been lodged may apply to the Human Services Board for relief on the grounds that it is unsubstantiated. The Board shall hold a fair hearing under 3 V.S.A. § 3091. Unless the Commissioner agrees otherwise, the fair hearing shall be given priority by the Board and an expedited hearing shall be provided, with a decision issued promptly thereafter.~~

(e) ~~If a report is found to be unsubstantiated, the records shall be retained as part of the confidential records of the Department of Disabilities, Aging, and~~

~~Independent Living. If no court proceeding is brought pursuant to subdivision 6903(e)(3) of this title within six years of the date of the notice to the person against whom the complaint was lodged, the records relating to the unsubstantiated report shall be destroyed after notice to such person, unless he or she requests that the records not be destroyed.~~

~~(f) If an appeal is filed pursuant to subsection (d) of this section or to a court, the name of the individual shall not be added to the Registry until a substantiated finding of abuse, neglect, or exploitation becomes final.~~

(1) The Department shall:

(A) Notify the reporter in writing if Adult Protective Services decides not to investigate or to conduct an assessment of the report. The notification shall be provided within five business days after the decision is made and shall inform the reporter that the reporter may ask the Commissioner to review the decision.

(B) Notify the alleged victim, and the alleged victim's representative, if any, in writing of the outcome of the investigation. The notification shall be provided within five business days after the decision has been made and shall inform the alleged victim or the alleged victim's representative that the alleged victim or the alleged victim's representative may ask the Commissioner to review the decision.

(2) The investigation shall include, except where inclusion would jeopardize the health, welfare, or safety of the vulnerable adult:

(A) An interview with the alleged victim, which may take place without the approval of the alleged victim's parents, guardian, or caregiver, but cannot take place over the objection of the alleged victim.

(B) An opportunity for the person who allegedly abused, neglected, or exploited the alleged victim to be interviewed. If the person declines to be interviewed, either through given notice or failure to respond, the alleged perpetrator shall be notified that the alleged perpetrator's declination may be noted in the investigation and may be taken into account in any potential appeal process.

(3) Upon completion of the investigation, the investigative summary describing pertinent evidence obtained during the course of the investigation and recommending a substantiation or unsubstantiation shall be submitted to the Commissioner or designee. Prior to substantiation, the Department shall interview the alleged perpetrator unless the alleged perpetrator declines. The investigative summary shall include a recommendation of whether placement on the Registry is appropriate. If the recommendation is for substantiation, the alleged perpetrator shall be given written notice by certified mail of the recommendation and a summary of the evidence that forms the basis of the recommendation and shall be notified of any remedial options that may exist and how a substantiated report might be used. The alleged perpetrator may seek an administrative review of the Department's intention to place the alleged perpetrator's name on the Registry by notifying the Department within

14 calendar days after the date listed on the Department's notice of the right to an administrative review. The Commissioner may grant an extension past the 14-day period for good cause, not to exceed 28 calendar days after the date listed on the Department's notice.

(4) The administrative review of the Department's intention to substantiate may be stayed if there is a related case pending in the Criminal or Family Division of the Superior Court that arose out of the same incident of abuse, neglect, or exploitation that resulted in the recommendation for substantiation. During the period the administrative review is stayed, if the Department's intent is to place the alleged perpetrator's name on the Registry, it shall add the alleged perpetrator's name to the Registry with a notation that the case is pending. Upon resolution of the Superior Court criminal or family case, the alleged perpetrator may exercise the alleged perpetrator's right to review under this section by notifying the Department in writing within 28 calendar days after the related court case, including any appeals, has been fully adjudicated. If the alleged perpetrator fails to notify the Department within 28 calendar days, the Department's decision shall become final, and no further review under this subsection is required.

(A) The Department shall hold an administrative review within 28 calendar days after receipt of the request for review. At least 14 calendar days prior to the administrative review, the Department shall provide to the alleged perpetrator requesting an administrative review the following: the redacted

investigation file, which means only the portion of the investigation file relevant to an Adult Protective Services recommendation, redacted as necessary to minimize disclosure of any confidential information; notice of time and place of the administrative review; and administrative review procedures, including information that may be submitted and mechanisms for providing information.

(B) At the administrative review, the alleged perpetrator who requested the review shall be provided with the opportunity to present documentary evidence or other information that supports the alleged perpetrator's position and provides information to the reviewer in making the most accurate decision regarding the allegation. In determining the weight to be given any such evidence or information, the administrative reviewer shall consider whether the alleged perpetrator had an opportunity to present the evidence or information to the investigator during the investigation and, if so, the reasons for the failure to present the evidence or information at that time. The Department shall have the burden of proving that, based upon a preponderance of evidence, it concluded that a reasonable person would believe that the vulnerable adult has been abused, neglected, or exploited by that alleged perpetrator. The administrative review may be held remotely by telephone or through electronic means by mutual agreement of the parties.

(C) The Department shall establish an administrative case review unit within the Department and may contract for the services of administrative

reviewers. An administrative reviewer shall be a neutral and independent arbiter who has no prior involvement in the original investigation of the allegation.

(5) Within seven calendar days after the completed review, the administrative reviewer shall:

(A) reject the Department's recommendation of substantiation;

(B) accept the Department's recommendation of substantiation; or

(C) defer any recommendation and direct the Department to further investigate upon the recommendation of the administrative reviewer.

(6) If the administrative reviewer accepts the Department's recommendation of substantiation, a Registry record shall be made within two business days. If the administrative reviewer rejects the Department's recommendation of substantiation, no Registry record shall be made.

(7) Within seven calendar days of the decision to reject or accept the recommendation of substantiation or to defer the substantiation in accordance with subdivision (5) of this subsection, the administrative reviewer shall provide notice to the alleged perpetrator of the administrative reviewer's decision. If the administrative reviewer accepts the Department's recommendation of substantiation, the notice shall advise the alleged perpetrator of the right to appeal the administrative reviewer's decision to the Human Services Board.

(8)(A) If no administrative review is requested, the Department's recommendation in the case shall be final, and the alleged perpetrator shall have no further right of review under this section.

(B) The Commissioner may grant an exception and permit such an administrative review upon good cause shown. Good cause may include an acquittal or dismissal of a criminal charge arising from the incident of abuse, neglect, or exploitation.

(9) In exceptional circumstances, the Commissioner, in the Commissioner's sole and nondelegable discretion, may reconsider any decision made by an administrative reviewer. A Commissioner's decision that imposes a penalty or creates a Registry record may be appealed to the Human Services Board.

(10) Within 30 calendar days after the date of the notice advising that a report has been substantiated, an alleged perpetrator against whom a complaint has been lodged may apply to the Human Services Board for relief on the grounds that it is unsubstantiated. The Human Services Board shall hold a fair hearing under 3 V.S.A. § 3091. Unless the Commissioner agrees otherwise, the hearing shall be given priority by the Human Services Board, and an expedited hearing shall be provided, not later than 30 calendar days after the date of the notice advising that a report has been substantiated, and a decision shall be issued within seven calendar days after the hearing.

(11) If a report is found to be unsubstantiated, the records shall be retained as part of the confidential records of the Department. If no court proceeding is brought pursuant to section 6903 of this title within six years following the date of the notice to the alleged perpetrator against whom the complaint was lodged, the records relating to the unsubstantiated report may be destroyed.

~~(g)~~(12) If the Human Services Board ~~or a court~~ reverses a substantiated finding, the Commissioner shall remove all information ~~in accordance with subsection (e) of this section~~ from the Registry.

~~(h)~~(13)(A) When a final determination has been made, the Commissioner shall inform the vulnerable adult or ~~his or her~~ the vulnerable adult's representative, ~~the reporter, and, if the report is substantiated, the current employer of the individual, of the outcome of the investigation and any subsequent proceedings~~ in writing.

(B) When a final determination of substantiation has been made, the Department shall also inform the perpetrator's current employer, if known, in writing of the outcome of the investigation and any subsequent proceedings.

§ 6907. REMEDIAL ACTION

(a) ~~Coordinated treatment plan~~ Protective services. If the investigation produces evidence that the vulnerable adult has been abused, neglected, or exploited, ~~the Commissioner shall arrange for the provision of protective services in accordance with a written coordinated treatment plan and protective~~

services are not in place, the Department shall pursue available protective services.

(b) Consent to services.

(1) Protective services shall be provided only with the consent of the vulnerable adult, ~~his or her~~; the vulnerable adult's guardian, agent under power of attorney, or agent under advance directive; or through appropriate court action. If the vulnerable adult does not consent, protective services shall not be provided, unless provision of protective services is ~~court-ordered~~ court ordered.

(2)(A) In the event that the vulnerable adult's guardian is the person responsible for the abuse, neglect, or exploitation, and the guardian ~~does not~~ consent to the investigation or receipt of protective services, ~~the Commissioner may petition for removal of the guardian~~ refuses consent to the investigation or the alleged victim's protective services, the investigator may seek review of the guardian's refusal by filing a motion with the Probate Division of the Superior Court pursuant 14 V.S.A. § 3062(c).

(B) In the event that the vulnerable adult's agent under power of attorney is the person responsible for the abuse, neglect, or exploitation, and the agent refuses to consent to the investigation or the alleged victim's protective services, the investigator may seek review of the agent's refusal by filing a petition in Superior Court pursuant to 14 V.S.A. § 3510(b).

(C) In the event that the vulnerable adult's agent under advance directive is the person responsible for the abuse, neglect, or exploitation, and the agent does not consent to the investigation or the receipt of protective services, the investigator may file a petition in Probate Court pursuant to 18 V.S.A. § 9718 to seek review under subdivision (b)(3) of that section as to whether the refusal is consistent with the authority granted to the agent in the advance directive.

(3) Failure to consent to protective services, either by the vulnerable adult or the vulnerable adult's guardian, agent under power of attorney, or agent under advance directive shall not automatically end an investigation of an alleged perpetrator.

* * *

§ 6909. RETALIATORY ACTION BY EMPLOYER PROHIBITED

No employer or supervisor may discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation; or take any other action detrimental to any employee who files a good faith report in accordance with the provisions of this chapter, by reason of the report. Any person making a report under this chapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of ~~his or her~~ making a report. Nothing in this section

grants immunity to a person reporting the person's own perpetration of maltreatment.

§ 6910. INTERFERENCE BY CAREGIVER

If consent to receive protective services has been obtained in accordance with section 6907 of this title and the Commissioner has reasonable cause to believe that the caregiver is interfering with the provision of those protective services, the ~~Commissioner~~ Department may petition the Superior Court for an order enjoining the caregiver from interfering with the provision of protective services. The petition shall present facts to show that the vulnerable adult is in need of protective services, that ~~he or she or his or her guardian~~ the vulnerable adult or the vulnerable adult's representative consents to the receipt of protective services, and that the caregiver has interfered with the provision of protective services. If the court, after hearing, finds that the vulnerable adult requires and consents to protective services, and has been prevented by ~~his or her~~ the vulnerable adult's caregiver from receiving protective services; the court may issue an order enjoining the caregiver from further interference. ~~The court may modify the terms of the coordinated treatment plan.~~

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

(a) Access to records.

(1) ~~Information obtained through reports and investigations, including the identity of the reporter, shall remain confidential and shall not be released absent a court order, except as follows:~~ Subject to confidentiality or privilege

protections, except those provided by the Health Insurance Portability and Accountability Act of 1996, its corresponding regulations, and 18 V.S.A. § 1881, the Department’s Adult Protective Services shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the Department’s duties under this chapter. The duties include the investigation of abuse, neglect, or exploitation or the provision of protective services to a vulnerable adult. A person, agency, or institution that has a record or document that the Department needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the Department. For the purposes of this subsection, “financial records” does not include records developed or maintained by the Department of Financial Regulation.

(2) The Department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial record from a person, agency, or institution or a medical record, including a mental health record, from a hospital or health care provider if the request for a record is made in the course of an investigation by the Department.

(3) If the Department cannot obtain access to a record or document that is necessary to properly investigate or to perform another duty under this chapter, the Department may petition the Superior Court for access to the record or document.

(4) On good cause shown, the court shall order the person, agency, or institution in possession or control of a record or document to allow the Department to have access to that record or document under the terms and conditions prescribed by the court.

(5) A person, agency, or institution in possession or control of a requested record or document is entitled to notice and a hearing on a petition filed under this section.

(6) Access to a confidential record under this section does not constitute a waiver of confidentiality.

(7) A person who in good faith makes an alleged victim's information or a copy of the information available to an investigator in accordance with this section shall be immune from civil or criminal liability for disclosure of the information unless the person's actions constitute negligence, recklessness, or intentional misconduct. Nothing in this section shall be construed to provide civil or criminal immunity to a person suspected of having abused, neglected, or exploited a vulnerable adult.

(b) Confidentiality of reports and documents.

(1)(A)(i) ~~The investigative report~~ Information obtained through reports to and assessments and investigations conducted by the Department, including the identity of the reporter, shall be confidential and shall not be released absent a court order, except the final investigative summary report shall be disclosed only to:

~~(I)~~(i) the Commissioner or person designated to receive such records;

~~(II)~~(ii) persons assigned by the Commissioner to investigate reports;

~~(III)~~(iii) the ~~person reported to have abused, neglected, or exploited a vulnerable adult~~ alleged perpetrator;

~~(IV)~~(iv) the vulnerable adult or ~~his or her~~ the vulnerable adult's representative;

~~(V)~~(v) the Office of Professional Regulation when deemed appropriate by the Commissioner;

~~(VI)~~(vi) the Secretary of Education when deemed appropriate by the Commissioner;

~~(VII)~~(vii) the Commissioner for Children and Families or designee for purposes of review of expungement petitions filed pursuant to section 4916c of this title;

~~(VIII)~~(viii) the Commissioner of Financial Regulation when deemed appropriate by the Commissioner for an investigation related to financial exploitation;

~~(IX)~~(ix) a law enforcement agency; and

~~(X)~~(x) the State's Attorney, or the Office of the Attorney General, when the Department believes there may be grounds for criminal

prosecution or civil enforcement action, or in the course of a criminal or a civil investigation.

~~(ii)~~(B) When disclosing information pursuant to this subdivision (1), reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

~~(B)~~(2) Relevant information may be disclosed to the Secretary of Human Services, or the Secretary's designee, for the purpose of remediating or preventing abuse, neglect, or exploitation; to assist the Agency in its monitoring and oversight responsibilities; and in the course of a relief from abuse proceeding, guardianship proceeding, or any other court proceeding when the Commissioner deems it necessary to protect the victim, and the victim or ~~his or her~~ the victim's representative consents to the disclosure. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order. Disclosures necessary to conduct Adult Protective Services investigations or to make referrals to law enforcement agencies, or to divisions or grantees of the Department, shall be permitted, but reasonable efforts shall be made to limit

the information to the minimum necessary to accomplish the intended purpose of the disclosure.

(3) Notwithstanding subdivision (a)(1) of this section, financial information made available to an adult protective services investigator pursuant to this section may be used only in a judicial or administrative proceeding or investigation directly related to a report required or authorized under this chapter. Relevant information may be disclosed to the Secretary of Human Services, pursuant to subdivision (2) of this subsection.

~~(C) Relevant information may be disclosed to a Family Division of the Superior Court, upon the request of that court, in any proceeding in which:~~

~~(i) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or~~

~~(ii) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2).~~

~~(2) Notwithstanding subdivision (1)(A) of this subsection, financial information made available to an adult protective services investigator pursuant to section 6915 of this title may be used only in a judicial or administrative proceeding or investigation directly related to a report required or authorized under this chapter. Relevant information may be disclosed to the Secretary of Human Services pursuant to subdivision (1)(B) of this subsection,~~

~~and may also be disclosed to the Commissioner of Financial Regulation when the investigation relates to financial exploitation of a vulnerable adult.~~

~~(b)(c)~~ The Commissioner Department shall maintain a registry of substantiated caregivers that shall contain the following information:

(1) the names of all the individuals found on the basis of a substantiated report to have abused, neglected, or exploited a vulnerable adult; the date of the finding; and the nature of the finding. In addition, the Commissioner shall require that, aside from a person's name, at least one other personal identifier is listed in the Registry to prevent the possibility of misidentification the date and nature of the finding;

(2) the names of individuals convicted of a crime pursuant to 13 V.S.A. § 1383; and

(3) in addition, aside from a caregiver's name, at least one other personal identifier to prevent the possibility of misidentification.

~~(e)(d)~~ Disclosure of Registry information.

(1) The Commissioner or designee may disclose Registry information only to:

~~(1)(A)~~ The State's Attorney or the Attorney General.

~~(2)(B)~~ The public as required by the Nursing Home Reform Act of 1986 and regulations promulgated under the Act.

~~(3)(C)~~ An employer if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment,

transportation, or supervision of children or vulnerable adults. ~~“Employer,”~~
Notwithstanding section 6902 of this chapter, “employer,” as used in this section, means a person or organization who employs or contracts with one or more individuals to care for or provide transportation services to children or vulnerable adults, on either a paid or volunteer basis. The employer may submit a request concerning a current employee, volunteer, grantee, or contractor or an individual to whom the employer has given a conditional offer of a contract, volunteer position, or employment. ~~The request shall be accompanied by a release signed by the current or prospective employee, volunteer, grantee, or contractor.~~ If that individual has a record of a substantiated report, the ~~Commissioner~~ Department shall provide the Registry information to the employer.

~~(4)~~(D) An individual seeking to determine if the individual’s own name is on the Registry.

(E) A person or organization serving vulnerable adults by assisting with employer functions; offering, providing, or arranging for home sharing; or providing personal care services, developmental services, or mental health services for vulnerable adults. The person or organization may submit a request concerning an individual who has applied to provide such services or an individual who is already so engaged. ~~The request shall be in writing and shall be accompanied by a release from the person applying for or already~~

~~providing such services.~~ If the person has a record of a substantiated report, the Commissioner shall provide the Registry information.

~~(5)(F)~~ The Commissioner for Children and Families or designee for purposes related to:

~~(A)(i)~~ the licensing or registration of facilities and individuals regulated by the Department for Children and Families; and

~~(B)(ii)~~ the Department's child protection obligations under chapters 49–59 of this title.

~~(6)(G)~~ The Commissioner of Health or the Commissioner's designee for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by the Department of Health, including persons to whom a conditional offer of employment has been made.

~~(7)(H)~~ Upon request or when relevant to other states' adult protective services offices.

~~(8)(I)~~ The Board of Medical Practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

~~(9)(J)~~ The Secretary of Education or the Secretary's designee, for purposes related to the licensing of professional educators pursuant to 16 V.S.A. chapter 5, subchapter 4 and chapter 51.

~~(10)(K)~~ The Office of Professional Regulation for the purpose of evaluating an applicant, licensee, holder of a certification, or registrant for possible unprofessional conduct, where appropriate.

~~(11)~~(L) A Family Division of the Superior Court upon request of that court if it is involved in any proceeding in which:

~~(A)~~(i) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

~~(B)~~(ii) a parent of a child contests an allegation that ~~he or she~~ the parent fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2).

(2) The request for disclosure of Registry information pursuant to subdivisions (1)(C), (1)(E)–(G), and (1)(I)–(K) of this subsection shall be in writing and accompanied by a release from the person applying for or already providing services to children or vulnerable adults.

~~(4)~~(e) An employer providing transportation services to children or vulnerable adults may disclose Registry records obtained pursuant to subdivision ~~(e)(3)~~(d)(1)(C) of this section to the Agency of Human Services or its designee for the sole purpose of auditing the records to ensure compliance with this chapter. An employer shall provide such records at the request of the Agency or its designee. Only Registry records regarding individuals who provide direct transportation services or otherwise have direct contact with children or vulnerable adults may be disclosed.

~~(e)~~(f) A person may, at any time, apply to the Human Services Board for relief if ~~he or she~~ the person has reasonable cause to believe that the contents of the Registry or investigative records are being misused.

~~(f)~~(g) A person may at any time apply to the Department for expungement of ~~his or her~~ the person's name from the Registry. The ~~petitioner~~ person shall have the burden of showing why ~~his or her~~ the person's name should be expunged from the Registry. The Department shall consider the person's completion of reparation and rehabilitation in determining whether the person's name should be expunged from the Registry.

~~(g) Any person who violates this section shall be fined not more than \$500.00.~~

~~(h) Volunteers shall be considered employees for purposes of this section.~~

* * *

§ 6913. PENALTIES; ABUSE; NEGLECT; EXPLOITATION;

MANDATORY REPORTER'S FAILURE TO REPORT

(a) Whenever the ~~Commissioner~~ Department finds, after notice and hearing, that a person has committed sexual abuse as defined in subdivision 6902(1)(D) of this title, ~~sexual exploitation as defined in subdivision 6902(6)(D),~~ exploitation as defined in subdivision ~~6902(6)(A) or (B)~~ 6902(13) of this title in an amount in excess of \$500.00, abuse that causes grievous injury to or the death of a vulnerable adult, or neglect that causes grievous injury to or the death of a vulnerable adult, the ~~Commissioner~~ Department may

impose an administrative penalty of not more than ~~\$10,000.00~~ \$25,000.00 for each violation. The ~~Commissioner~~ Department shall notify the Office of Professional Regulation, or any other professional licensing board applicable to the violator, of any decision made pursuant to this subsection.

(b) The Department shall investigate allegations that a mandated reporter has failed to make a required report when it appears that an investigation is appropriate. Whenever the ~~Commissioner~~ Department finds, after notice and hearing, that a mandatory reporter, as defined in ~~subdivisions 6903(a)(1), (2), (3), (4), and (5)~~ subsection 6903(a) of this title, has willfully violated the provisions of ~~subsection~~ subdivision 6903(a)(1), the ~~Commissioner~~ Department may impose an administrative penalty not to exceed ~~\$500.00~~ \$1,000.00 per violation. For purposes of this subsection, every 24 hours that a report is not made beyond the period for reporting required by ~~subsection~~ section 6903(a) shall constitute a new and separate violation, and a mandatory reporter shall be liable for an administrative penalty of not more than ~~\$500.00~~ \$1,000.00 for each 24-hour period, not to exceed a maximum penalty of ~~\$5,000.00~~ \$25,000.00 per reportable incident.

(c) Whenever the Department finds that a mandatory reporter willfully or knowingly withheld information, or provided false or inaccurate information, the Department may impose an administrative penalty not to exceed \$1,000.00 per violation.

(d) A person who is aggrieved by a decision under subsection (a) ~~or~~ (b),
or (c) of this section may appeal that decision to the Superior Court, where
either party may request trial by jury.

§ 6914. ACCESS TO CRIMINAL RECORDS

~~(a) The Commissioner may obtain from the Vermont Crime Information
Center the record of convictions of any person to the extent that the
Commissioner has determined by rule that such information is necessary to
protect vulnerable adults.~~ The Commissioner may obtain from the Vermont
Crime Information Center the record of convictions of any person to the extent
that the Commissioner has determined that such information is necessary to
protect vulnerable adults.

~~(b) An employer may ask the Commissioner to obtain from the Vermont
Crime Information Center the record of convictions of a person who is a
current employee, volunteer, or contractor, or a person to whom the employer
has given a conditional offer of a contract, volunteer position, or employment.
The request shall be in writing and shall be accompanied by a release by the
current or prospective contractor or employee. If the person has a record of
convictions, the Commissioner shall inform the employer of the date and type
of conviction.~~

~~(c) A person or organization serving vulnerable adults by assisting with
employer functions, offering, providing, or arranging for home sharing,
personal care services, developmental services, or mental health services for~~

~~vulnerable adults, may submit a request to the Commissioner concerning an individual who has applied to provide such services or an individual who is already so engaged. The request shall be in writing, and shall be accompanied by a release from the individual applying for or already providing such services. If the individual has a record of convictions, the Commissioner shall inform the person or organization submitting the request of the date and type of conviction.~~

(d) The Commissioners of Disabilities, Aging, and Independent Living, of Health, and of Mental Health or their designees may, for the protection of vulnerable adults or for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by the Departments of Disabilities, Aging, and Independent Living, of Health, and of Mental Health, ask the Vermont Crime Information Center for the record of convictions of a person who is a current employee, volunteer, or contractor, or a person to whom the employer has given a conditional offer of a contract, volunteer position, or employment. If the individual has a record of convictions, the Vermont Crime Information Center shall inform the appropriate Commissioner, or the Commissioner's designee, department of the date and type of conviction.

(e)(c) Information released to an employer under this section shall not be released or disclosed by the employer to any person. Any person who violates this subsection shall be fined not more than \$500.00.

~~(f) Volunteers shall be considered employees for purposes of this section.~~

~~(g) [Repealed.]~~

§ 6915. ACCESS TO FINANCIAL INFORMATION

(a) As used in this chapter:

(1) “A person having custody or control of the financial information”

means:

(A) a bank as defined in 8 V.S.A. § 11101;

(B) a credit union as defined in 8 V.S.A. § 30101;

(C) a broker-dealer or investment advisor, as those terms are defined in 9 V.S.A. § 5102; or

(D) a mutual fund as defined in 8 V.S.A. § 3461.

(2) “Capacity” means an individual’s ability to make and communicate a decision regarding the issue that needs to be decided.

(3) “Financial information” means an original or copy of, or information derived from:

(A) a document that grants signature authority over an account held at a financial institution;

(B) a statement, ledger card, or other record of an account held at a financial institution that shows transactions in or with respect to that account;

(C) a check, clear draft, or money order that is drawn on a financial institution or issued and payable by or through a financial institution;

(D) any item, other than an institutional or periodic charge, that is made under an agreement between a financial institution and another person's account held at a financial institution;

(E) any information that relates to a loan account or an application for a loan;

(F) information pertaining to an insurance or endowment policy, annuity contract, contributory or noncontributory pension fund, mutual fund, or security, as defined in 9 V.S.A. § 5102; or

(G) evidence of a transaction conducted directly or by electronic or telephonic means, including surveillance video, access logs, IP addresses, and any other digital logs, documents, and metadata.

(4) "Financial institution" means any financial services provider licensed, registered, or otherwise authorized to do business in Vermont, including a bank, credit union, broker-dealer, investment advisor, mutual fund, or investment company.

(b)(1) A person having custody or control of the financial information of a vulnerable adult shall make the information or a copy of the information available to an Adult Protective Services investigator upon receipt of ~~a court order or receipt~~ of the investigator's written request or, in the instances described in subsections (d) and (e) of this section, upon receipt of a court order.

~~(1)~~(2) The request shall include a statement signed by the account holder, if ~~he or she~~ the account holder has capacity, or the account holder's guardian with financial powers or agent under a power of attorney consenting to the release of the information to the investigator.

~~(2)~~(c) If the vulnerable adult lacks capacity and does not have a guardian or agent, or if the vulnerable adult lacks capacity and ~~his or her~~ the vulnerable adult's guardian or agent is the alleged perpetrator, the request shall include a statement signed by the investigator asserting that all of the following conditions exist:

~~(A)~~(1) The account holder is an alleged victim of abuse, neglect, or financial exploitation.

~~(B)~~(2) The alleged victim lacks the capacity to consent to the release of the financial information.

~~(C)~~(3) Law enforcement is not involved in the investigation or has not requested a subpoena for the information.

~~(D)~~(4) The alleged victim will suffer imminent harm if the investigation is delayed while the investigator obtains a court order authorizing the release of the information.

~~(E)~~(5) Immediate enforcement activity that depends on the information would be materially and adversely affected by waiting until the alleged victim regains capacity.

~~(F)(6)~~ The Commissioner of Disabilities, Aging, and Independent Living has personally reviewed the request and confirmed that the conditions set forth in ~~subdivisions (A) through (E) of this subdivision (2)~~ this subsection have been met and that disclosure of the information is necessary to protect the alleged victim from abuse, neglect, or financial exploitation.

~~(e)(d)~~ If a guardian refuses to consent to the release of the alleged victim's financial information, the investigator may seek review of the guardian's refusal by filing a motion with the Probate Division of the Superior Court pursuant to 14 V.S.A. § 3062(c).

~~(d)(e)~~ If an agent under a power of attorney refuses to consent to the release of the alleged victim's financial information, the investigator may file a petition in Superior Court pursuant to 14 V.S.A. § 3510(b) to compel the agent to consent to the release of the alleged victim's financial information.

~~(e)(f)~~ The investigator shall include a copy of the written request in the alleged victim's case file.

~~(f)(g)~~ The person having custody or control of the financial information shall not require the investigator to provide details of the investigation to support the request for production of the information.

~~(g)(h)~~ The information requested and released shall be used only to investigate the allegation of abuse, neglect, or financial exploitation or for the purposes set forth in subdivision ~~6911(a)(1)(B)~~ 6911(b)(3) of this title and shall not be used against the alleged victim.

~~(h)~~(i) The person having custody or control of the financial information shall provide the information to the investigator as soon as possible but, absent extraordinary circumstances, ~~no~~ not later than 10 business days following receipt of the investigator's written request or receipt of a court order or subpoena requiring disclosure of the information.

~~(i)~~(j) A person who in good faith makes an alleged victim's financial information or a copy of the information available to an investigator in accordance with this section shall be immune from civil or criminal liability for disclosure of the information unless the person's actions constitute gross negligence, recklessness, or intentional misconduct. Nothing in this section shall be construed to provide civil or criminal immunity to a person suspected of having abused, neglected, or exploited a vulnerable adult.

~~(j) The person having custody or control of the financial information of an alleged victim may charge the Department of Disabilities, Aging, and Independent Living no more than the actual cost of providing the information to the investigator and shall not refuse to provide the information until payment is received. A financial institution shall not charge the Department for the information if the financial institution would not charge if the request for the information had been made directly by the account holder.~~

* * *

§ 6917. WRITTEN COMMUNICATIONS

Any written communications from the Department, an administrative reviewer, or the Human Services Board to the alleged victim or to the alleged perpetrator shall use plain language.

§ 6918. RULEMAKING

The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to implement this subchapter, including:

(1) conducting referrals on intakes, including:

(A) required referrals; and

(B) referrals on intake reports not accepted for assessment or investigation;

(2) conducting assessments, including:

(A) the components of an assessment;

(B) the determinations of an assessment; and

(C) timelines required for the assessment; and

(3) conducting investigations, including:

(A) the components of an investigation;

(B) the determinations of an investigation; and

(C) timelines required for the investigation.

Sec. 2. 33 V.S.A. chapter 69, subchapter 2 is amended to read:

Subchapter 2. ~~Abuse~~ Maltreatment Prevention for Vulnerable Adults

* * *

§ 6932. JURISDICTION AND VENUE

(a) The Family Division of the Superior Court shall have jurisdiction over proceedings under this subchapter.

(b) Emergency orders under section 6936 of this title may be issued by a judge of the Criminal, Civil, or Family Division of the Superior Court.

(c) Proceedings under this subchapter may be commenced in the county in which the ~~plaintiff~~ vulnerable adult resides. If the vulnerable adult has left the residence to avoid abuse, neglect, or exploitation, the ~~plaintiff~~ vulnerable adult shall have the option to bring an action in the county of the previous residence or the county of the new residence.

§ 6933. REQUEST FOR RELIEF

(a) A vulnerable adult, Adult Protective Services staff, or an interested person on behalf of a vulnerable adult may seek relief from abuse, neglect, or exploitation by filing a petition requesting one or ~~both~~ more of the following orders:

(1) an order that the defendant refrain from abusing, neglecting, or exploiting the vulnerable adult;

(2) an order that the defendant immediately vacate the household;

(3) an order that the defendant shall not contact or communicate with the vulnerable adult either directly or through a third party;

(4) an order that the defendant shall not come within a fixed distance from the vulnerable adult;

(5) an order that the defendant shall not stalk, as defined in 12 V.S.A.

§ 5131, the vulnerable adult;

(6) an order to deliver care plans, medicines, physicians' orders, and medical records to the vulnerable adult or the vulnerable adult's representative;

(7) an order to cooperate in the transfer of the vulnerable adult's care to ensure the vulnerable adult's safety and well-being;

(8) an order to immediately return any cash, checks, money, or property belonging to the vulnerable adult in the defendant's possession;

(9) an order to immediately return any personal documentation regarding the vulnerable adult, including identification documents, insurance information, financial records, and immigration documentation;

(10) an order that the defendant shall not access, dispose of, take, or transfer funds, accounts, or property from the vulnerable adult or any account in the name of the vulnerable adult;

(11) an order to cease any access, sharing, or use of identifying information, image, or likeness of the vulnerable adult;

(12) an order regarding possession, care, and control of any animal owned, possessed, leased, kept, or held as a pet by the vulnerable adult; and

(13) such other orders as deemed necessary to protect the vulnerable adult.

(b) No filing fee shall be required.

§ 6934. NOTICE

Except as provided in section 6936 of this title, the court shall grant relief only after notice to the defendant and a hearing. If the petition is made by an interested person, notice shall be provided to the vulnerable adult and the court shall determine whether the vulnerable adult is capable of expressing ~~his or her~~ the vulnerable adult's wishes with respect to the petition and, if so, whether the vulnerable adult wishes to pursue the petition. If the court determines that the vulnerable adult is capable of expressing ~~his or her~~ the vulnerable adult's opinion and does not wish to pursue the petition, the court shall dismiss the petition.

* * *

Sec. 3. 18 V.S.A. § 9718 is amended to read:

§ 9718. PETITION FOR REVIEW BY THE PROBATE DIVISION OF THE
SUPERIOR COURT

(a) A petition may be filed in the Probate Division of the Superior Court under this section by:

(1) a principal, guardian, agent, ombudsman, a mental health patient representative, or interested individual other than one identified in an advance directive, pursuant to subdivision 9702(a)(10) of this title, as not authorized to bring an action under this section;

(2) a social worker or health care provider employed by or directly associated with the health care provider, health care facility, or residential care facility providing care to the principal;

(3) the Defender General if the principal is in the custody of the Department of Corrections;

(4) a representative of the State-designated protection and advocacy system if the principal is in the custody of the Department of Mental Health; or

(5) an individual or entity identified in an advance directive, pursuant to subdivision 9702(a)(10) of this title, as authorized to bring an action under this section; or

(6) Adult Protective Services, for the purposes of reviewing the authority of the agent under 33 V.S.A. § 6907(b)(3) to refuse protective services under 33 V.S.A. § 6907(b)(2)(C).

* * *

Sec. 4. ADULT PROTECTIVE SERVICES; FINANCIAL PROTECTIONS

On or before November 1, 2023, the Department of Disabilities, Aging, and Independent Living, in collaboration with the Department of Financial Regulation and representatives of financial institutions as defined in 33 V.S.A. § 6915, shall submit a report to House Committee on Human Services and to the Senate Committee on Health and Welfare providing proposed legislative changes to protect vulnerable adults from financial abuse, neglect, and exploitation.

Sec. 5. EMERGENCY HOUSING TRANSITION; LEGISLATIVE INTENT;

PURPOSE

(a) Vermont's pandemic-era General Assistance Emergency Housing Program is ending on June 30, 2023, and approximately 1,200 households are transitioning out of the Program.

(b) It is the intent of the General Assembly:

(1) that vulnerable Vermonters should continue to be housed while sufficient time is allocated for developing alternative housing placements, including emergency housing beds, and furthering community collaboration;

(2) to establish legislative oversight for the transition efforts;

(3) that the exits from hotel and motel accommodations occur through an intentional transition process that provides dignity, oversight, collaborative efforts, and coordinated service delivery;

(4) that all households find or are offered alternative housing options;
and

(5) that the Agency of Human Services negotiate rate reductions with the participating hotels and motels, with a goal of achieving rates that are at least 50 percent lower than those in effect in June 2023.

(c) The purposes of Secs. 5–10 of this act are:

(1) to direct the Joint Fiscal Committee to monitor the efforts of the Agency of Human Services in assisting households with transitioning out of

the pandemic-era General Assistance Emergency Housing Program and into post-pandemic housing; and

(2) to allow the Agency financial flexibility and resources, if needed, to provide transition and supportive services for the vulnerable Vermonters described in 2022 Acts and Resolves No. 185, Sec. B.1100(a)(33)(A), which was added by 2023 Acts and Resolves No. 3, Sec. 45.

Sec. 6. EMERGENCY HOUSING TRANSITION; AGENCY OF HUMAN SERVICES; JOINT FISCAL COMMITTEE OVERSIGHT; REPORTS

(a) Not later than April 1, 2024, the Agency of Human Services, directly or through its community partners, shall assist in finding or offer to each household housed as of June 30, 2023 in a hotel or motel through the pandemic-era General Assistance Emergency Housing Program an alternative housing placement, unless a household secures its own housing placement. Except as provided in subdivision (2) of this subsection, the Agency shall continue to provide temporary hotel or motel housing to a household that was housed in a hotel or motel through the pandemic-era General Assistance Emergency Housing Program as of June 30, 2023 until such time as the Agency offers the household an alternative housing placement or the household secures its own housing placement, but in no event later than April 1, 2024.

(1) Beginning on July 1, 2023, in order to maintain eligibility for temporary, continued hotel or motel housing while awaiting a housing placement, households housed in a hotel or motel through this act shall:

(A) participate in the coordinated entry and case management processes, including cooperating with the Agency and services providers on screening and care planning for transitioning out of the pandemic-era General Assistance Emergency Housing Program and engaging in monthly eligibility reassessments;

(B) engage in their own search for alternative housing options and notify their case manager, reentry team, or Agency staff if they are successful in securing a housing placement; and

(C) contribute 30 percent of their gross household income toward the cost of their hotel or motel housing.

(2) Between July 1, 2023 and April 1, 2024, the Agency of Human Services shall no longer be required to pay for a household's hotel or motel housing if any one or more of the following occurs:

(A) the household is offered an alternative housing placement but does not accept the offer within 48 hours;

(B) the household secures its own housing placement;

(C) the household fails to comply with one or more of the responsibilities set forth in subdivision (1) of this subsection (a); or

(D) the household is asked to leave the hotel or motel housing due to misconduct.

(3) As used in this act, “alternative housing placements” may include shelter beds and pods; placements with family or friends; permanent housing solutions, including tiny homes, manufactured homes, and apartments; residential treatment beds for physical health, long-term care, substance use, or mental health; nursing home beds; and recovery homes.

(4) The temporary, continued hotel or motel housing benefit offered pursuant to this subsection (a) while awaiting a housing placement shall not be considered an entitlement, is not available to new applicants, and is limited to households in the pandemic-era General Assistance Emergency Housing Program as of June 30, 2023.

(b) On or before the last day of each month from July 2023 through March 2024, the Agency of Human Services, or other relevant agency or department, shall report to the House Committee on Human Services, the Senate Committee on Health and Welfare, and the Joint Fiscal Committee on its progress in assisting households housed in hotels and motels with transitioning from the pandemic-era General Assistance Emergency Housing Program to alternative housing placements and on the creation of new, alternative housing solutions. Each update shall include:

(1) the number of households remaining in hotels and motels that have not yet been transitioned to an alternative housing placement by household size, by eligibility category, and by each Agency of Human Services district;

(2) the number of actual alternative housing placements made during the previous reporting period compared with the targeted number of placements for that period;

(3) of the households successfully transitioned to an alternative housing placement during the previous month, the number of households whose screening indicated a potential need for services from each department within the Agency;

(4) the number of beds available for emergency housing in each Agency of Human Services district in the State, with separate reporting on the number of beds available in nursing homes and residential care homes for individuals whose screening indicates they could meet the clinical criteria for those settings and the number of emergency beds available for individuals whose screening indicates they do not meet the clinical criteria, including low-barrier shelters, beds for youth, and beds for individuals who have experienced domestic violence;

(5) of the households that were housed in a hotel or motel for four months or longer and transitioned out during the previous month, the number that have had all or a portion of their security deposits returned to them since leaving the hotel or motel or are awaiting the return of these funds;

(6) of the households that were housed in a hotel or motel for less than four months and transitioned out during the previous month, the amount of security deposit funds refunded to the State by the hotels and motels during that month;

(7) the number of households that have been successfully transitioned to an alternative housing placement since the previous report, the types of housing settings in which they have been placed, and the supportive services they are receiving in conjunction with their housing;

(8) the outlook for transitioning additional households to alternative housing placements in the coming months, including an estimate of the number of households likely to be placed per month;

(9) a projected timeline for transitioning the remaining households to alternative housing placements;

(10) the average negotiated rate for rooms that the Agency paid to the hotels and motels providing the temporary, continued hotel or motel housing during the previous month;

(11) the status of responding to and implementing the letters of interest from community partners and municipalities for housing and supportive services;

(12) the status of contracts for housing and supportive services resulting from the Agency's requests for proposals (RFPs), including the Agency's May 24, 2023 RFP for emergency shelter staffing and services;

(13) the status of grants awarded through the Housing Opportunity Program and how those grants relate to the Agency's efforts to assist households with transitioning out of the pandemic-era General Assistance Emergency Housing Program;

(14) once the Adverse Weather Conditions Policy takes effect again in the fall of 2023, how the Agency plans to distinguish the households that become eligible for the General Assistance Emergency Housing Program under that Policy from the households that the Agency is assisting with transitioning out of the pandemic-era General Assistance Emergency Housing Program;

(15) the total amount of funds expended to date on housing placements and supportive services for households transitioning out of the pandemic-era General Assistance Emergency Housing Program; and

(16) beginning with the September 2023 reporting period, any State rules and local regulations and ordinances that are impeding the timely development of safe, decent, affordable housing in Vermont communities in order to:

(A) identify areas in which flexibility or discretion are available; and

(B) advise whether the temporary suspension of relevant State rules and local regulations and ordinances, or the adoption or amendment of State rules, would facilitate faster and less costly revitalization of existing housing and construction of new housing units.

(c) On or before the last day of each month from July 2023 through March 2024, the Vermont Housing and Conservation Board shall report to the House Committees on Human Services and on General and Housing; the Senate Committees on Health and Welfare and on Economic Development, Housing and General Affairs; and the Joint Fiscal Committee on:

(1) the status of the Board's initiatives to make additional housing units available and how those initiatives support the Agency of Human Services' efforts to assist households with transitioning out of the pandemic-era General Assistance Emergency Housing Program; and

(2) the status of the Board's efforts to expand emergency shelter capacity, including the number of new beds available since the previous report, the number of additional beds planned, and when the additional planned beds are likely to become available.

(d) The Agency may hire temporary employees or contract with community-based organizations, or both, as needed to support the Agency in assisting households housed in hotels and motels with transitioning from the pandemic-era General Assistance Emergency Housing Program to alternative housing placements; to support the creation of new, alternative housing solutions; and to collect and report on the information required by subsection (b) of this section.

(e) On April 1, 2024, the Agency shall report to the House Committees on Appropriations, on Human Services, and on Housing and General Affairs; the

Senate Committees on Appropriations, on Health and Welfare, and on Economic Development, Housing and General Affairs; and the Joint Fiscal Committee the number households, if any, that were not successfully transitioned out of the pandemic-era General Assistance Emergency Housing Program into alternative housing placements and the reason why each such household was not successfully placed.

Sec. 7. CASH FUND FOR CAPITAL AND ESSENTIAL INVESTMENTS;

APPROPRIATION

(a) In fiscal year 2024, the balance of the Other Infrastructure, Essential Investments, and Reserves subaccount in the Cash Fund for Capital and Essential Investments established pursuant to 32 V.S.A. § 1001b, after all other transactions authorized from that subaccount by the fiscal year 2024 budget act have been satisfied, is appropriated to the Agency of Human Services to be used as needed to implement Secs. 5–10 of this act.

(b) The Commissioner of Finance and Management shall report to the Joint Fiscal Committee at the Committee’s July meeting the amount of the balance that was made available to the Agency of Human Services pursuant to subsection (a) of this section.

(c) The Agency of Human Services shall report on the amount of unobligated funds remaining, if any, from the appropriation in subsection (a) of this section as part of the Agency’s fiscal year 2024 budget adjustment presentation.

Sec. 8. EMERGENCY HOUSING TRANSITION; FUNDING; FISCAL
YEAR 2024 BUDGET ADJUSTMENT

(a) The Agency of Human Services shall hold in reserve as much funding as possible from the Agency's fiscal year 2023 closeout process as carryforward for potential investment in assisting households with transitioning out of the pandemic-era General Assistance Emergency Housing Program. The reserved funds shall not be used unless the amounts appropriated pursuant to Sec. 7 of this act are not sufficient to fully implement the phase-out of the pandemic-era General Assistance Emergency Housing Program as set forth in this act.

(b) The Agency of Administration is authorized to use available resources as necessary to assist in the implementation of the phase-out of the pandemic-era General Assistance Emergency Housing Program as set forth in Secs. 5–10 of this act.

(c) The Agency of Human Services shall include relevant language and amounts in its fiscal year 2024 budget adjustment recommendations, if needed, to complete the process of phasing out the pandemic-era General Assistance Emergency Housing Program.

Sec. 9. AFFORDABLE HOUSING DEVELOPMENT; FISCAL YEAR 2024
FUNDING

(a) Of the \$40,000,000.00 appropriated to the Vermont Housing and Conservation Board (VHCB) in the fiscal year 2024 budget act to provide

support and enhance capacity for the production and preservation of affordable mixed-income rental housing and homeownership units:

(1) \$10,000,000.00 shall be used to provide support and enhance the capacity, availability, and utilization of manufactured homes in cooperatively owned, nonprofit, and privately owned manufactured home parks with vacant and available lots. VHCB shall consult with the Department of Housing and Community Development to ensure that new investments prioritize individuals and families exiting from hotels and motels in accordance with this act.

(2) VHCB shall grant \$4,000,000.00 to the Vermont State Housing Authority for the Manufactured Home Improvement and Repair Program to prevent vulnerable mobile home park residents from becoming homeless.

(3) Notwithstanding 32 V.S.A. § 5(b), VHCB shall grant \$5,000,000.00 to the Department of Housing and Community Development to support the Vermont Housing Improvement Program.

(b) For fiscal year 2024, the VHCB shall increase its “Homeless Unit” set aside for housing projects seeking VHCB funding from 15 percent to 30 percent, with priority given to households exiting hotels and motels in accordance with this act.

Sec. 10. 2023 Acts and Resolves No. 47, Sec. 47 is amended to read:

Sec. 47. EFFECTIVE DATES

This act shall take effect on July 1, 2023, except that:

(1) ~~Secs. Sec. 1 (24 V.S.A. § 4414) and 2 (24 V.S.A. § 4412)~~ shall take effect on December 1, 2024, ~~except for subdivision (1)(D) of Sec. 2, which shall take effect on July 1, 2023.~~

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Sec. 11. EFFECTIVE DATES

(a) Secs. 1–4 shall take effect on July 1, 2023.

(b) The remaining sections shall take effect on passage.

Date Governor signed bill: June 29, 2023